

**DECISION**



*18372 Weiskopf P.L. II*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-203108

**DATE:** June 8, 1981

**MATTER OF:** C. S. Smith Training, Inc.

**DIGEST:**

GAO will not review agency determination not to procure services under section 8(a) of Small Business Act because Government estimate of in-house cost was lower than prices solicited from firms eligible under section 8(a) absent showing of fraud or bad faith by procurement officials.

C.S. Smith Training, Inc. protests the Army's refusal to procure certain instruction services for socially and economically disadvantaged small business concerns under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)(1) (Supp. III 1979). The protester questions the Government estimate upon which the Army based its determination that it would be less costly to perform the services in-house than to acquire the protester's services under section 8(a). The Army had solicited a price from the protester to compare with the Government in-house estimate to determine whether to contract under section 8(a).

Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with Government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. However, by the terms of the act, a Government contracting officer is authorized "in his discretion" to let the contract to SBA upon terms and conditions the agency and SBA agree to. Therefore, contracting agencies have broad discretionary authority in this area, and we will not review a determination whether

*[Protest of Agency Determination Not To Procure Services  
Under Section 8(a) of Small Business Act]*

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to contract under section 8(a) or the judgmental decisions involved unless the protester presents prima facie evidence of fraud or bad faith on the part of procurement officials. Arawak Consulting Corporation, 59 Comp. Gen. 522 (1980), 80-1 CPD 404; Carmatek Corporation, B-199415, November 18, 1980, 80-2 CPD 368. Such evidence must include a showing that the agency had a specific intent to injure the protester. See Arlandria Construction Co., Inc. -- Reconsideration, B-195044, B-195510, July 9, 1980, 80-2 CPD 21.

No such showing exists here. The protester does not allege fraud or bad faith, but that the Army's estimate was unreasonable. Thus, we have no legal basis to review the protest.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel